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**Appendix A**

United States Court of Appeals
for the Eighth Circuit

Nos. 08-2807/08-2813/08-2894/08-2895

Reginald Clemons; Richard D. Clay; Jeffrey R. Ferguson; Roderick Nunley,
Plaintiffs,

Michael Anthony Taylor; Martin Link; Mark Christeson; William L. Rousan; John Charles Middleton; Russell Earl Bucklew; Earl Ringo, Jr.,
Intervenor Plaintiffs/Appellants,

v.

Larry Crawford; James D. Purkett; Terry Moore,
Defendants/Appellees.

Appeals from the United States District Court for the Western District of Missouri.

Submitted: February 11, 2009
Filed: November 10, 2009

Before RILEY, SMITH, and SHEPHERD, Circuit Judges.

RILEY, Circuit Judge:

Eight condemned Missouri prisoners[1] appeal the dismissal of their 42 U.S.C. § 1983 action challenging the manner in which Missouri's written lethal injection protocol might be implemented in future executions. The prisoners allege the State of Missouri, through its officers Larry Crawford, James Purkett, and Terry Moore (collectively, Missouri), has a "well-documented history of employing incompetent and unqualified personnel to oversee [the] crucial element[s] of executions by lethal injection," and "refusing properly to train the individuals to whom responsibility for crucial tasks in the lethal injection process is delegated." Based on this history, the prisoners argue Missouri "will continue to employ such incompetent and unfit personnel for future executions." The prisoners contend this possibility violates the Eighth Amendment by creating a substantial risk that Missouri's written execution protocol will not be followed, resulting in the condemned prisoners being insufficiently anesthetized and suffering extreme pain before their deaths.

The district court[2] initially denied Missouri's motion for judgment on the pleadings, but later reconsidered *sua sponte* and granted the motion. In the same

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[1] These eight prisoners, Reginald Clemons, Richard D. Clay, Jeffrey R. Ferguson, Roderick Nunley, Michael Anthony Taylor, Martin Link, Mark Christeson, and William L. Rousan, will be collectively referred to as the "prisoners."

[2] The Honorable Fernando J. Gaitan, Chief Judge, United States District Court for the Western District of Missouri.

order, the district court denied the motions to intervene of three other condemned Missouri prisoners.[3] The intervenors appeal this ruling. We affirm the district court's grant of judgment on the pleadings and its denial of the motions to intervene.

## I. BACKGROUND

### A. Missouri's Execution Procedure Before the Written Protocol

Before establishing a written execution protocol, Missouri used an unwritten execution procedure which called for the successive administration of three chemicals through an intravenous line (IV) placed in the femoral vein. *See Taylor v. Crawford*, 487 F.3d 1072, 1074 (8th Cir. 2007), *cert. denied*, 128 S. Ct. 2047 (2008). First, 5 grams of sodium pentothal (also known as thiopental) rendered the prisoner unconscious, then 60 milligrams of pancuronium bromide paralyzed the prisoner's muscles, and finally, a 240-milliequivalent injection of potassium chloride stopped the prisoner's heart. *Id.*

Discovery in the *Taylor* litigation[4] revealed Missouri employed a physician, John Doe I (Dr. Doe), to mix

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[3] These three prisoners, John Charles Middleton, Russell Earl Bucklew, and Earl Ringo, Jr., will be collectively referred to as the "intervenors."

[4] The full history of the *Taylor* litigation is recounted in *Taylor*, 487 F.3d 1072, *Taylor v. Crawford*, 445 F.3d 1095, 1096-98 (8th Cir. 2006), and *Taylor v. Crawford*, 457 F.3d 902, 904 (8th Cir. 2006).

the lethal chemicals and insert the IV lines. *Id.* at 1075. Under Missouri's unwritten procedure, Dr. Doe believed he had "independent authority to alter the chemical doses at will based on his medical judgment, and that in fact, there were occasions when he chose to give a dose of only 2.5 grams of thiopental without notifying the director."[5] *Id.* "Dr. Doe [ ] revealed that he has dyslexia, which causes him to transpose letters and numbers," *id.*, and Dr. Doe also "admitted he did not keep accurate chemical logs" documenting the amount of each chemical given at an execution, *id.* at 1076. Dr. Doe monitored the prisoner's anesthetic depth solely by observing the prisoner's facial expression through a window which was partially obstructed by blinds. *Id.* at 1075. The prisoners' complaint in the instant case asserts Missouri knew Dr. Doe had "medical licensure problems and problematic malpractice history."[6] The prisoners also assert a licensed vocational nurse, John Doe II (Nurse Doe),"was unable to tell, despite personal observation, that [Dr. Doe] consistently prepared the wrong dose of thiopental."

During the *Taylor* litigation, the district court determined Missouri's unwritten method of execution

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[5] A dose of 2.5 grams of thiopental would be sufficient to induce a state of deep anesthesia, and, "in fact, rapid induction of anesthesia for surgery is generally achieved in the average adult with a 0.28-gram dose." *Taylor*, 487 F.3d at 1076.

[6] Despite Dr. Doe's shortcomings, we observed "there was not a scintilla of evidence that any prisoner ever suffered any pain other than what was necessary to acquire access to the prisoner's circulatory system through the insertion of the needed intravenous lines." *Taylor*, 487 F.3d at 1075.

subjected condemned prisoners to an unconstitutional risk of pain and suffering, and ordered the State to prepare a written protocol incorporating various provisions. *See Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035, *8 (W.D. Mo. June 26, 2006). Missouri established a written execution protocol and, after further litigation, this court upheld the constitutionality of Missouri's written protocol. *See Taylor*, 487 F.3d at 1085.

B. Missouri's Written Lethal Injection Protocol

Missouri's written execution protocol requires the successive administration of the same three chemicals used under the unwritten protocol. First, a set of four syringes containing a total of 5 grams of thiopental in a 200 cc solution renders the prisoner unconscious, and is followed by a saline flush. Medical personnel then "physically examine the prisoner to confirm that he is unconscious," using "standard clinical techniques to assess consciousness, such as checking for movement, opened eyes, eyelash reflex, pupillary responses or diameters, and response to verbal commands and physical stimuli." Medical personnel then inspect the IV site. A second set of syringes containing an additional 5 grams of thiopental will be administered through a secondary IV line in the unlikely event the prisoner is still conscious after receiving the initial 5 grams. After confirming the prisoner is unconscious, 60 milligrams of pancuronium bromide in a 60 cc solution is injected, rendering the prisoner unable to

move. The prisoner is then injected with another saline flush. Finally, 240 milliequivalents of potassium chloride is injected to stop the prisoner's heart. After another saline flush, medical personnel monitor the electrical activity of the prisoner's heart, pronouncing death when an electrocardiogram shows all electrical activity of the prisoner's heart has ceased. If the prisoner's heart does not stop within five minutes, additional potassium chloride is injected. The proper administration of thiopental ensures the condemned prisoner will not experience any pain caused by the "potassium chloride, which indisputably will cause an excruciating burning sensation as it travels through [the condemned prisoner's] veins to induce a heart attack." *Taylor*, 487 F.3d at 1074.

The execution team includes medical personnel and non-medical personnel. Under the protocol, a physician, nurse, or pharmacist prepares the chemicals used at the execution. Medical personnel may not change the quantities of these chemicals without prior approval from the department director. The fifteen syringes are distinctively labeled. "Medical personnel determine the most appropriate locations for [IV] lines," and "may insert the primary IV line as a peripheral line or as a central venous line . . . provided they have appropriate training, education, and experience for that procedure." A physician, nurse, or emergency medical technician (EMT) is responsible for inserting the IV lines, inspecting the IV site, attaching the leads from the electrocardiograph to the prisoner's chest, assessing

the prisoner's consciousness, monitoring the prisoner, and supervising the injection of the lethal chemicals by non-medical members of the execution team. After the execution, medical personnel are required to sign a "Chemical Log," indicating the quantities of the chemicals used and the quantities discarded during the execution. Missouri's protocol also requires all members of the execution team to sign a form verifying the chemicals were given in the order specified by the protocol. Dr. Doe is no longer a member of Missouri's execution team. *Taylor*, 487 F.3d at 1077 n.3.

## II. DISCUSSION

### A. Standard of Review

We review de novo a district court's grant of judgment on the pleadings, "view[ing] all facts pleaded by the nonmoving party as true and grant[ing] all reasonable inferences in favor of that party." *Poehl v. Countrywide Home Loans, Inc.*, 528 F.3d 1093, 1096 (8th Cir. 2008) (citations omitted). "A grant of judgment on the pleadings is appropriate 'where no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting *Faibisch v. Univ. of Minn.*, 304 F.3d 797, 803 (8th Cir. 2002)).

We review the grant of judgment on the pleadings under "the same standard used to address a motion to dismiss for failure to state a claim under [Fed. R. Civ. P.] 12(b)(6)." *Ashley County, Ark. v. Pfizer, Inc.*, 552 F.3d 659, 665 (8th Cir. 2009) (citation omitted).

"[W]ell-pleaded facts, not legal theories or conclusions, determine [the] adequacy of [t]he complaint." *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 698 (8th Cir. 2003) (citing *Parkhill v. Minn. Mut. Life Ins. Co.*, 286 F.3d 1051, 1057-58 (8th Cir. 2002)). The facts alleged in the complaint "'must be enough to raise a right to relief above the speculative level.'" *Drobnak v. Andersen Corp.*, 561 F.3d 778, 783 (8th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

B. Eighth Amendment

The prisoners argue Missouri's current execution protocol violates the Eighth Amendment because of the substantial risk the protocol may be improperly administered by incompetent or unqualified medical personnel. According to the prisoners' allegations, Missouri's past employment of Dr. Doe and Nurse Doe creates "a grave risk that [the prisoners] will experience unconstitutional pain and suffering" during their future executions, in violation of their Eighth and Fourteenth Amendment rights. Put another way, the prisoners argue Missouri will hire "incompetent and unfit personnel" in the future because it has allegedly done so in the past. The prisoners assert, although Missouri's written protocol is constitutional on its face, the written protocol "will have little effect when ignored or bungled by incompetent or unfit personnel." Because we have already held Missouri's execution protocol is constitutional as written, our opinion now confines itself to the question of whether Missouri's protocol violates the Eighth Amendment because of a

possibility incompetent or unqualified personnel will improperly prepare or administer the lethal chemicals required by Missouri's protocol.

"The Eighth Amendment to the Constitution, applicable to the States through the Due Process Clause of the Fourteenth Amendment, provides that '[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.'" *Baze v. Rees*, 553 U.S. ___, 128 S. Ct. 1520, 1529 (2008) (internal citation omitted). Because capital punishment is constitutional, "[i]t necessarily follows that there must be a means of carrying it out." *Id.* "[T]he constitution does not demand the avoidance of all risk of pain in carrying out executions." *Id.* Instead, to establish an Eighth Amendment violation, "the conditions presenting the risk must be `*sure or very likely* to cause serious illness and needless suffering,' and give rise to 'sufficiently *imminent* dangers.' *Id.* at 1530-31 (quoting *Helling v. McKinney*, 509 U.S. 25, 33, 34 (1993)). "[T]o prevail on such a claim there must be a 'substantial risk of serious harm,' an `objectively intolerable risk of harm' that prevents prison officials from pleading that they were 'subjectively blameless for purposes of the Eighth Amendment.'" *Id.* at 1531 (quoting *Farmer v. Brennan*, 511 U.S. 825, 842, and 846 n.9 (1994)). The mere fact "an execution method may result in pain, either by accident or as an inescapable consequence of death," does not amount to an Eighth Amendment violation. *Id.*

In *Baze*, the Supreme Court addressed the constitutionality of Kentucky's written lethal

injection protocol. *Id.* at 1525-26. Like Missouri's protocol, Kentucky's protocol involves the successive administration of thiopental, pancuronium bromide, and potassium chloride. *Id.* at 1528. Kentucky's "protocol reserves responsibility for inserting the IV catheters to qualified personnel having at least one year of professional experience." *Id.* Non-medical "personnel are responsible for mixing the solutions containing the three drugs and loading them into syringes." *Id.* The warden and deputy warden are responsible for visually inspecting the prisoner for signs of consciousness and watching for problems with the IV catheters and tubing. *Id.*

Like the prisoners in this case, the *Baze* petitioners contended there was "a significant risk that the [lethal injection] procedures [would] *not* be properly followed—in particular, that the sodium thiopental [would] not be properly administered to achieve its intended effect—resulting in severe pain when the other chemicals are administered." *Id.* at 1530. With respect to the risk the thiopental would be improperly prepared, the *Baze* petitioners contended (1) "the doses are difficult to mix into solution form and load into syringes," and (2) "Kentucky employs untrained personnel who are unqualified to calculate and mix an adequate dose[.]" *Id.* at 1533. The Supreme Court saw no substantial risk of serious harm in allowing non-medical personnel to mix the thiopental, recognizing the state trial court's finding that mixing thiopental is a simple process involving injecting a liquid into a vial of powder and shaking it up until the powder dissolves. *See id.*

The *Baze* petitioners also made similar arguments regarding the risk the thiopental would be improperly administered. The *Baze* petitioners argued it was "possible that the IV catheters [would] infiltrate into surrounding tissue, causing an inadequate dose to be delivered to the vein," and "Kentucky has no reliable means of monitoring the anesthetic depth of the prisoner after the sodium thiopental has been administered." *Id.* The Court rejected these arguments, declaring, "the asserted problems related to the IV lines do not establish a sufficiently substantial risk of harm to meet the requirements of the Eighth Amendment." *Id.*

The Court determined there was no substantial risk of serious harm because Kentucky's protocol incorporated various important safeguards to protect against improper administration of thiopental, "[t]he most significant [safeguard being] the written protocol's requirement that members of the IV team must have at least one year of professional experience as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman." *Id.* The Court also observed Kentucky's protocol required preparation of two sets of lethal injection drugs, and "call[ed] for the IV team to establish both primary and backup lines." *Id.* at 1534. The Court reasoned, "These redundant measures ensure that if an insufficient dose of sodium thiopental is initially administered through the primary line, an additional dose can be given through the backup line before the last two drugs are injected." *Id.* Finally, the Court recognized the

additional safeguard of "the warden and deputy warden in the execution chamber ... watch[ing] for signs of IV problems, including infiltration," which "would be very obvious even to the average person, because of the swelling that would result." *Id.* (internal quotation marks omitted). The Court held, "[t]he risks of maladministration [petitioners] have suggested—such as improper mixing of chemicals and improper setting of IVs by trained and experienced personnel—cannot remotely be characterized as 'objectively intolerable.' *Id.* at 1537. Addressing future challenges to other states' protocols, the Court declared, "[a] State with a lethal injection protocol substantially similar to [Kentucky's] ... would not create" a substantial risk of severe pain rising to the level of an Eighth Amendment violation. *Id.*

The Missouri protocol's safeguards against the risk of maladministration are similar to, and in many ways more stringent than, Kentucky's. Missouri's protocol requires a physician, nurse, or pharmacist (rather than a layperson) to prepare the thiopental. Missouri also requires medical personnel (rather than the warden or deputy warden) to watch for signs of IV problems, and to enter the execution chamber to check for signs of consciousness and examine the IV site. A physician, nurse, or EMT with appropriate training, education, and experience sets the IVs. A backup IV is set, and an additional 5 grams of thiopental is prepared in the unlikely event the prisoner is still conscious after receiving the first 5-gram dose. Medical personnel have no discretion to

vary the amount of chemicals given without prior approval from the director. As we recognized in *Taylor*, the various safeguards in Missouri's protocol, coupled with the lack of discretion allowed, minimize any risk that the chemicals will be improperly prepared or administered. *See Taylor*, 487 F.3d at 1084.

The prisoners contend their allegations are different from the allegations in *Baze*, because *Baze* addressed only the risk that *competent* medical personnel might improperly prepare or administer the lethal chemicals. The prisoners in this case emphasize that their allegations state a claim for violation of the Eighth Amendment because they have alleged previous improper preparation and administration of the lethal chemicals by *incompetent* medical personnel.[7] The Missouri prisoners here, just as the Kentucky petitioners in *Baze*, "acknowledge that the lethal injection procedure, if applied as intended, will result in a humane death," but "nevertheless contend that the lethal injection protocol is unconstitutional ..., because of the risk that the protocol's terms might not be properly followed . . . ." *Baze*, 128 S. Ct. at 1526. We reject the prisoners' attempt to distinguish their case from *Baze* on the basis of alleged past

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[7] Because the prisoners do not define the terms "competent" or "incompetent," we give the words their dictionary definitions. "Competent" is defined as "having suitable or sufficient skill, knowledge, experience, etc., for some purpose; properly qualified." *Random House Webster's Unabridged Dictionary*, 417 (2d ed. 1997). "Incompetent" is defined as "not competent; lacking qualification or ability; incapable." *Id.* at 967.

incompetence on the part of Missouri's medical personnel.

In *Taylor*, we declared, "[a]bsent some specific disqualifying characteristic of the chosen medical personnel, we would be hard pressed to say that a physician, trained nurse, or a licensed pharmacist is not qualified to mix the chemicals." *Taylor*, 487 F.3d at 1084. The prisoners' complaint sets forth no such disqualifying characteristic.[8] Further, although the prisoners' complaint repeatedly uses conclusory terms such as "incompetent," "unfit," "untrained," and "unqualified," the prisoners set forth absolutely no factual allegations suggesting incompetence, lack of necessary qualifications, or inadequate training on

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[8] In their brief, the prisoners allege discovery revealed a member of the execution team, possibly Nurse Doe, has a 1998 misdemeanor criminal conviction for aggravated stalking. The basis for the prisoners' contention is a newspaper article reporting a nurse on the execution team pleaded no contest to misdemeanor counts of stalking and tampering with property, arising from charges the nurse vandalized property and threatened a man who was having an affair with the nurse's estranged wife. The article also describes the nurse as having an "unblemished" nursing license. Because the prisoners' complaint does not include these allegations, we do not consider them on appeal. However, even if the prisoners had amended their complaint to include these allegations, we fail to see the relationship between the nurse's misdemeanor conviction and the nurse's competence to mix chemicals, check a prisoner for signs of consciousness, insert an IV, or monitor an IV site. *See Harbison v. Little*, 571 F.3d 531, 537 (6th Cir. 2009) (rejecting the district court's determination that a Tennessee execution team member's "history of drug and alcohol addiction and psychological disorders . . . raised questions about the screening process for members of the execution team").

the part of any current or prospective member of Missouri's execution team. The prisoners' complaint makes no factual allegations suggesting any current or prospective member of Missouri's execution team would intentionally or unintentionally deviate from or ignore the written protocol. Nothing in the prisoners' complaint even remotely suggests any action or inaction by any member of Missouri's execution team poses a substantial risk of serious harm.

Instead, the prisoners' allegations stem entirely from Missouri's previous employment of Dr. Doe and, to a much lesser extent, Nurse Doe. Dr. Doe operated under an unwritten procedure, which Dr. Doe believed conferred upon him "independent authority to alter the chemical doses at will based on his medical judgment." *Id.* at 1075. It is undisputed that former unwritten protocol is no longer in effect and Dr. Doe no longer participates in executions in Missouri. Even accepting the prisoners' assertion Dr. Doe can be characterized as "incompetent" and "unqualified," Dr. Doe's past "incompetence" and lack of qualifications, while operating under the former unwritten protocol, does not support an inference any member of Missouri's current execution team is "incompetent" or "unqualified." The mere allegation Missouri employed an "incompetent" and "unqualified" individual in the past simply does not support the prisoners' allegations Missouri will employ "incompetent" and "unqualified" personnel in the future.

Missouri's new protocol specifically requires a physician, nurse, or pharmacist to prepare the chemicals used at the execution, and requires a physician, nurse, or EMT to carry out the remaining medical aspects of the execution and supervise the non-medical members of the execution team. In *Taylor*, we emphasized "it is imperative for the State to employ personnel who are properly trained to competently carry out each medical step of the procedure." *Taylor*, 487 F.3d at 1084. In the absence of contrary supporting factual allegations, we will not assume or infer Missouri intends to disregard its own protocol, and this court's instructions, by employing medical personnel who are "incompetent" or "unqualified" to perform their assigned duties. The prisoners have not alleged a sufficiently substantial risk of serious harm or a sufficiently imminent danger to support an Eighth Amendment claim. We therefore conclude the district court did not err by determining, as a matter of law, the prisoners failed to state a claim for violation of the Eighth Amendment.

C. Discovery

The prisoners argue the district court erroneously determined *Baze* limits the scope of discovery to which condemned prisoners are entitled, and precludes any consideration of the backgrounds or characteristics of individual members of Missouri's execution team as a matter of law. This is a misreading of the district court's order. The district court did not find that, under *Baze*, no facts could ever exist to warrant discovery into the background

of a specific member of Missouri's execution team, or that consideration of a specific team member's background or characteristics is precluded in every case as a matter of law, nor do we read *Baze* so broadly. The district court simply determined judgment on the pleadings was appropriate in this case, and therefore the prisoners were not entitled to further discovery. Because we affirm the district court's grant of judgment on the pleadings, we need not address the specific discovery rulings the district court made before granting judgment on the pleadings. *See Casazza v. Kiser*, 313 F.3d 414, 420 (8th Cir. 2002) (recognizing an appellate court need not reach discovery issues when affirming a district court's grant of a motion to dismiss).

The prisoners protest that, because the identities of the execution team members are kept secret, the prisoners are unable to uncover facts relating to the backgrounds and characteristics of individual execution personnel without first engaging in discovery. In their complaint, the prisoners assert they "are entitled by due process of law to receive information regarding the qualifications, training[,] and fitness of execution team members," and Missouri's "refusal to provide Plaintiffs with sufficient information bearing on the training and qualifications of the personnel . . . constitutes a violation of Plaintiffs' rights to due process of law." At oral argument the prisoners expressly abandoned this due process claim on appeal. Therefore, we need not decide whether the prisoners have a due process right

to discover information relating to their executioners' backgrounds and qualifications.[9]

D. Motions to Intervene

The intervenors contend the district court erroneously denied their motions to intervene because (1) they are entitled to intervene in the action as of right, and (2) alternatively, they meet the requirements for permissive intervention. Because the district court properly granted judgment on the pleadings, we need not decide whether the intervenors should have been allowed to intervene if the underlying case had survived judgment on the pleadings. The district court did not err by denying the prisoners' motions to intervene because there is no longer an underlying case in which to intervene. *See Webster Groves Sch. Dist. v. Pulitzer Publ'g. Co.*, 898 F.2d 1371, 1377 (8th Cir. 1990) (finding no abuse of discretion in the district court's denial of a motion for permissive intervention where "the [plaintiff] already had taken a voluntary dismissal of its suit, and there remained no case in which to intervene"); see *also Shempert v. Harwick Chem. Corp.*, 151 F.3d 793, 799 (8th Cir. 1998) (concluding the district court's denial of a motion to intervene was proper where the main action was dismissed).

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[9] However, we have located no authority indicating the prisoners have such a due process right to probe into the backgrounds of execution personnel.

## III. CONCLUSION

We affirm the district court's grant of judgment on the pleadings and its denial of the motions to intervene.

**Appendix B**

In the United States District Court
for the Western District of Missouri
Central Division

Reginald CLEMONS,
Richard D. CLAY, Jeffrey
FERGUSON, and
Roderick NUNLEY,
Plaintiffs,

v. Case No. 07-4129-CV-C-FJG

Larry CRAWFORD,
James D. PURKETT,
Terry MOORE, and John
DOES 1-50,
Defendants.

## ORDER

On June 30, 2008, the Court denied defendants' Motion for Judgment on the Pleadings. However, upon further reflection of the decisions in *Baze* and *Taylor*, the Court reconsiders its decision and hereby **GRANTS** defendants' Motion for Judgment on the Pleadings.

> When considering a motion for a judgment on the pleadings, the Court accepts as true all facts pleaded by the

> nonmoving party and grants all reasonable inferences from the pleadings in favor of the nonmovant... . Judgment on the pleadings is appropriate where no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law.

*Osby v. Citigroup, Inc.*, No. 07-CV-06085-NKL, 2008 WL 2074102, *1 (W.D.Mo. May 14, 2008)(internal citations and quotations omitted).

In their Complaint, plaintiffs allege that "[d]efendants have demonstrated a failure to employ qualified and trained personnel to discharge the medical tasks associated with the lethal injection procedure." (Complaint, ¶ 70). Plaintiffs further allege that based on defendants' past failure to select trained and qualified personnel, there is a substantial likelihood that the personnel defendants will select to implement the revised procedure will also be unfit. This failure to select untrained personnel will result in a grave risk that plaintiffs will experience unconstitutional pain and suffering in the course of their executions. (Complaint, ¶¶ 71-73).

Since plaintiffs' Complaint was filed on July 9, 2007, the Supreme Court handed down its decision in *Baze v. Rees*, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) Although the Supreme Court did not go int great detail regarding the qualifications of the members of Kentucky's

execution team, the Supreme Court did offer some guidance. The Supreme Court noted in its opinion that the members of the Kentucky team all had at least one year of professional experience as a certified medical assistant, phlebotomist, EMT, paramedic or military corpsman. Additionally, the Court noted that each member of that team participated in at least ten practice sessions per year. Id. at 1533-34. The Supreme Court stated:

> [a] stay of execution may not be granted on grounds such as those asserted here unless the condemned prisoner establishes that the State's lethal injection protocol creates a demonstrated risk of severe pain. He must show that the risk is substantial when compared to the known and available alternatives. A State with a lethal injection protocol substantially similar to the protocol we uphold today would not create a risk that meets this standard.

*Id.* at 1537.

In *Taylor v. Crawford*, 487 F.3d 1072 (8th Cir. 2007), *cert. denied*, 128 S.Ct. 2047 (2008), the Eighth Circuit noted that Missouri's revised protocol calls for a physician, nurse or pharmacist to prepare the chemicals. The quantities of the chemicals may not be changed without prior approval of the department director. A physician, nurse or

emergency medical technician is responsible for inserting the intravenous lines and confirming that the IV lines are working properly. Additionally, both a primary and a backup IV are set in place. After the five grams of thiopental are injected, the medical personnel physically examine the prisoner to confirm unconsciousness. After confirming unconsciousness, the second and third chemicals are injected, if at least three minutes have passed since the thiopental was injected. Also, the Department recently indicated that an anesthesiologist with more than one year of professional experience has also been added to the execution team. Thus, the protocol now actually exceeds what the *Taylor* court found constitutional.

Plaintiffs argue that the State has historically employed execution personnel who have been unable to perform many of the critical tasks required to carry out an execution humanely. Plaintiffs state that the Department of Corrections has failed and will continue to fail to adequately train and support these personnel in the performance of the execution procedure and that these failures are likely to lead to the maladministration of the execution procedure because the protocol leaves to the discretion of the execution team how several of the steps of the procedure will be carried out.

The Court disagrees. The protocol which is currently in place leaves very little discretion to the members of the execution team. Although there is some discretion, that is to be expected, because every inmate and execution are different. However, the

main components of the procedure are established and the members of the execution team are not allowed to significantly vary any of the major steps in the protocol without proper authorization.

Additionally, the members of the execution team are fully qualified to carry out the steps of the execution protocol. Plaintiffs wish to more extensively probe into the backgrounds of the team members and to question them regarding how they will carry out their duties. However, the law does not allow plaintiffs to select the most qualified medical personnel to serve on the execution team. The law requires only a year of professional experience. The law does not allow plaintiffs input into who will be performing the executions, as long as they have the requisite experience and are licensed in their field. As the Eighth Circuit stated in *Taylor*:

> The state has broad discretion to determine the procedures for conducting an execution . . .[W]e recognize that what could be done to update or even improve the protocol is not the appropriate legal inquiry to be undertaken by this or any other reviewing court. . . . Where the procedures are reasonably calculated to ensure a swift, painless death, they are immune from constitutional attack, . . . as the Constitution protects only against the wanton and unnecessary infliction of pain. What the Sixth Circuit said about the Tennessee

> protocol is equally true about Missouri's: The whole point of the [Missouri] lethal injection protocol is to avoid the needless infliction of pain, not to cause it. . . . The State's written protocol does not present any substantial foreseeable risk that the inmate will suffer the unnecessary or wanton infliction of pain.

*Id.* at 1084-85 (internal citations and quotations omitted).

After further reflection and analysis of the decisions in Baze and *Taylor*, the Court finds that there are no material issues of fact which remain to be resolved. The revised protocol which the Department of Corrections has now adopted is constitutional on its face as judged by the standards established by the Supreme Court.

Accordingly, the Court hereby **GRANTS** defendants' Motion for Judgment on the Pleadings (Doc. # 47); **DENIES** plaintiffs' Motion for Further Discovery (Doc. # 70); **DENIES** the Motions to Intervene filed by John Middleton, Russell Bucklew and Earl Ringo, Jr. (Docs. # 76, 78 and 81), **GRANTS** defendants' Motion to Replace Exhibit G, attached to Document No. 83 (Doc. # 84), **GRANTS** the Motion to File a File-Stamped Copy of Motion for Stay of Execution (Doc. # 86) and **DENIES** defendants' Motion for Expedited Ruling with Regard to John Middleton's Motion to Intervene (Doc. # 87).

Date: 7/15/08
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge

## Appendix C

In the United States District Court
for the Western District of Missouri
Central Division

Reginald CLEMONS,
Richard D. CLAY, Jeffrey
FERGUSON, and
Roderick NUNLEY,
Plaintiffs, Case No. 07-4129-CV-C-FJG

v.

Larry CRAWFORD,
James D. PURKETT,
Terry MOORE, and John
DOES 1-50,
Defendants.

### ORDER

Currently pending before the Court is defendants' Motion for Judgment on the Pleadings (Doc. # 47).

### I. BACKGROUND

Plaintiffs are prisoners with death sentences who claim that Missouri's implementation of its method of execution is unconstitutional because of the risk that the lethal chemicals may be improperly prepared or administered by unqualified and untrained personnel. Plaintiffs also claim a due

process violation because they were not provided with adequate information so that an assessment of the qualifications of the execution personnel can be made.

## II. STANDARD

> When considering a motion for a judgment on the pleadings, the Court accepts as true all facts pleaded by the nonmoving party and grants all reasonable inferences from the pleadings in favor of the nonmovant. . . . Judgment on the pleadings is appropriate where no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law.

*Osby v. Citigroup, Inc.*, No. 07-CV-06085-NKL, 2008 WL 2074102, *1 (W.D. Mo. May 14, 2008)(internal citations and quotations omitted).

## III. DISCUSSION

Defendants argue that Missouri's Lethal Injection Protocol is constitutional because it is very similar to the protocol used in Kentucky, which was approved by the United States Supreme Court in *Baze v. Rees*, 128 S. Ct. 1520 (2008). Defendants state that the Supreme Court did not look into the qualifications of the persons who would be mixing and administering the thiopental. The State argues that plaintiffs' claims should be dismissed because there is no

evidence that any errors occurred at past executions and even if there had been errors, Missouri has now adopted a written protocol that has added additional safeguards. Additionally, the State argues that regardless of who is administering the chemical and what their training may be, under the protocol, there are constitutionally adequate safeguards to prevent any likelihood that a condemned prisoner will experience any significant pain during their execution. The State argues that under *Baze*, the specific qualifications of the particular members of the execution team is not a relevant inquiry.

Plaintiffs state in response that their Complaint includes detailed allegations that defendants' procedures and personnel subject them to a substantial risk that could be easily alleviated. Plaintiffs argue that the State has historically employed execution personnel who have been unable to perform many of the critical tasks required to carry out an execution humanely. Plaintiffs state that the Department of Corrections will fail and has failed to adequately train and support these personnel in their performance of the execution procedure. These failures are likely to lead to the maladministration of the execution procedure because the protocol leaves to the discretion of the execution team how several of the steps of the procedure will be carried out. Plaintiffs state that they have adequately pled a violation of their Eighth Amendment rights because they have alleged: (1) a "substantial risk of serious harm," and (2) feasible measures that if taken would "significantly reduce

[the] substantial risk." *Baze*, 128 S. Ct. 1531-32. Plaintiffs also dispute the defendants' argument that *Baze* forecloses the factual basis for their claim. Plaintiffs argue that the Supreme Court did not hold that the training or experience of the execution team personnel could never be considered or might not be a factor in some future case. Plaintiffs state that the Supreme Court simply found that these were not issues in the Kentucky case. Plaintiffs also state that they have plead the existence of feasible less dangerous alternatives as required by *Baze*. Finally, plaintiffs state that they have adequately pled a violation of their right to information about the manner in which they will be executed.

In reply, defendants argue that there is no substantial risk of serious harm under Missouri's protocol because licensed medical personnel will prepare the drugs, set the IV's and check the inmate for signs of consciousness and inspect the IV site. Defendants argue that the Supreme Court found it unnecessary to probe behind the licensure of the team members into the details of their backgrounds, because these individuals are authorized to provide their services to the public. Defendants also argue that the allegations about incompetent personnel also fail because of the safeguards which are provided under the protocol to ensure that the prisoner will be unconscious before the second and third drugs are administered. The State also argues that the plaintiffs' alternatives will not reduce any substantial risk of harm. Finally, defendants

argue that the plaintiffs have adequate notice of the procedures to be used at their executions.

"The standard of review for a Rule 12(c) motion is essentially the same as for Rule 12(b)(6). . . .[A] complaint must plead enough facts to state a claim to relief that is plausible on its face. . . . This does not require heightened fact pleading." *Osby*, 2008 WL 2074102 at * 1 (internal citations and quotations omitted). Defendants go to great lengths to explain how Missouri's lethal injection protocol is similar to that of Kentucky's and argue that because the Supreme Court found Kentucky's protocol was constitutional, plaintiffs have no basis on which to challenge Missouri's protocol. However, the allegations which the plaintiffs are raising in this case were not at issue and were not squarely addressed by the Supreme Court in *Baze*. There is nothing in the *Baze* opinion which prevents plaintiffs from bringing the instant action.

## IV. CONCLUSION

Accordingly, as there is no insuperable bar to relief, the Court hereby **DENIES** defendants' Motion for Judgment on the Pleadings (Doc. # 47).

Date: 6/30/08
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge

**Appendix D**

United States Court of Appeals
for the Eighth Circuit

No. 08-2895

Reginald Clemons, et al.,
Appellants

John C. Middleton, et al.,

v.

Larry Crawford, et al,
Appellees

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Appeals from the United States District Court for the
Western District of Missouri - Jefferson City
(2:07-cv-04129-FJG)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Benton took no part in the consideration or decision of this matter.

December 22, 2009

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**Appendix E**

In the United States District Court
Western District of Missouri
Central Division

Reginald CLEMONS,
Richard D. CLAY, Jeffrey
FERGUSON, and
Roderick NUNLEY,
Plaintiffs, Case No. 07-4129-CV-C-FJG

v.

Larry CRAWFORD,
James D. PURKETT,
Terry MOORE, and John
DOES 1-50,
Defendants.

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Reginald Clemons, Richard D. Clay, Jeffrey Ferguson, and Roderick Nunley, by their attorneys, allege as follows:

## NATURE OF THE ACTION

1. On June 4, 2007, the United States Court of Appeals for the Eighth Circuit ruled that the Missouri Department of Corrections ("DOC") could proceed with executions pursuant to a revised lethal injection protocol. In so doing, the Court

stated that "it is imperative that the State employ personnel who are properly trained to competently carry out each medical step of the procedure." Slip Op. at 18. The DOC, however, historically has failed to recruit and train competent, fit individuals to serve on the execution team, and DOC officials intend to perform executions using personnel who are inadequately trained, qualified, and screened, in direct contravention of the Eighth Circuit's directive.

2. Plaintiffs are prisoners in the custody of the DOC, each of whom is currently under sentence of death by the State of Missouri. Plaintiffs bring this action under 42 U.S.C. § 1983, seeking declaratory and injunctive relief in order to prohibit Defendants from executing Plaintiffs in a manner likely to involve the wanton and unnecessary infliction of severe pain and suffering in violation of those rights guaranteed to Plaintiffs by the Eighth and Fourteenth Amendments to the Constitution of the United States.

3. Defendants, under authority of the State of Missouri, conduct executions through the successive injection of three chemicals. The first chemical, thiopental, is designed to render the condemned inmate unconscious prior to the administration of the second and third drugs. The second drug, pancuronium bromide or "pavulon," is designed to paralyze the inmate so as to give the appearance that the inmate's death is a peaceful one. Finally, the third drug, potassium chloride, is designed to travel though the inmate's veins to the

heart where it causes a massive and fatal heart attack.

4. Should an inmate fail to be properly or fully anesthetized by the thiopental, the inmate will feel extreme pain as the third drug, potassium chloride, travels through the inmate's veins en route to the heart, as well as the terrifying feeling of conscious asphyxiation caused by the pancuronium. Because the inmate is paralyzed, however, he or she will be completely unable to communicate his suffering to those witnessing the execution.

5. Because of the grave risk that a condemned inmate will experience severe excruciating pain if the lethal injection procedure is not performed properly, the Constitution requires that executions by lethal injection be overseen by personnel with qualifications and training sufficient to ensure that the condemned inmate is, and remains, fully anesthetized during injection of the second and third drugs in the protocol.

6. Defendant Crawford, however, has a well-documented history of employing incompetent and unqualified personnel to oversee this crucial element of executions by lethal injection. Accordingly, under the lethal injection protocol by which Defendants intend to execute Plaintiffs there exists a substantial likelihood that the personnel charged with carrying out Plaintiffs' executions are unqualified or otherwise unfit to do so.

7. Defendant Crawford also has a well-documented history of refusing properly to train the individuals to whom responsibility for crucial tasks

in the lethal injection process is delegated. Accordingly, there exists a substantial likelihood that the personnel charged with carrying out Plaintiffs' executions are improperly trained or otherwise unfit to discharge these responsibilities.

8. The delegation of such critical responsibilities to incompetent or improperly trained personnel creates a grave risk that the procedure will not be carried out according to its design and that as a result Plaintiffs will suffer excruciating and unnecessary pain prior to their deaths.

9. Upon information and belief, despite their clear awareness of this risk, Defendants have not made arrangements for properly qualified and trained personnel to perform those tasks necessary to ensure that Plaintiffs do not face a grave and unnecessary risk of suffering excruciating pain prior to their deaths.

10. Because the Constitution requires that executions by lethal injection be carried out by individuals with qualifications and training sufficient to ensure that Plaintiffs are, and remain, properly anesthetized during administration of the second and third drugs in the three drug sequence, Defendant Crawford's failure to ensure that the personnel charged with oversight of these executions are properly trained and qualified constitutes deliberate indifference to Plaintiffs' constitutional rights.

11. Defendants' newly submitted protocol exposes Plaintiffs to a grave risk that they will

experience unconstitutional pain and suffering prior to death.

## JURISDICTION AND VENUE

12. This action arises under 42 U.S.C. § 1983 for violations of the Eighth and Fourteenth Amendments of the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (civil rights violations), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (further relief).

13. This Court has personal jurisdiction over Defendants as they are residents of the State of Missouri and are presently located in the State of Missouri.

14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

15. Plaintiffs have each exhausted all available administrative remedies.

## PARTIES

16. Plaintiff Reginald Clemons is a citizen of the United States and a resident of the State of Missouri. Mr. Clemons, who has been sentenced to death by the State of Missouri, is currently an inmate at the Potosi Correctional Center in Mineral Point, Missouri and is in the custody of the DOC.

17. The State of Missouri has moved the Missouri Supreme Court to set an execution date for Mr. Clemons. The motion remains pending, and no execution date has yet been set for Mr. Clemons.

18. Plaintiff Richard Clay is a citizen of the United States and a resident of the State of Missouri. Mr. Clay, who has been sentenced to death by the State of Missouri, is currently an inmate at the Potosi Correctional Center in Mineral Point, Missouri and is in the custody of the DOC.

19. The State of Missouri has moved the Missouri Supreme Court to set an execution date for Mr. Clay. The motion has been granted, but no execution date has yet been set for Mr. Clay.

20. Plaintiff Jeffrey Ferguson is a citizen of the United States and a resident of the State of Missouri. Mr. Ferguson, who has been sentenced to death by the State of Missouri, is currently an inmate at the Potosi Correctional Center in Mineral Point, Missouri and is in the custody of the DOC.

21. The State of Missouri has moved the Missouri Supreme Court to set an execution date for Mr. Ferguson. The motion remains pending, and no execution date has yet been set for Mr. Ferguson.

22. Plaintiff Roderick Nunley is a citizen of the United States and a resident of the State of Missouri. Mr. Nunley, who has been sentenced to death by the State of Missouri, is currently an inmate at the Potosi Correctional Center in Mineral Point, Missouri and is in the custody of the DOC.

23. The State of Missouri has moved the Missouri Supreme Court to set an execution date for Mr. Nunley. The motion has been granted, but no execution date has yet been set for Mr. Nunley.

24. Defendant Larry Crawford is the Director of the Department of Corrections of the State of Missouri. Defendant Crawford's office is located in Jefferson City, Cole County, Missouri, and he resides within the Central Division of the United States District Court for the Western District of Missouri.

25. Defendant Crawford is authorized and directed by statute to provide "the necessary appliances for carrying into execution the death penalty by means of the administration of lethal gas or by means of the administration of lethal injection." Mo. Rev. Stat. § 546.720. At all times, and in all actions referred to in this complaint, Defendant Crawford has acted, and will continue to act, under color of state law, and he is sued in his individual capacity and official capacity for the purpose of obtaining declaratory and injunctive relief.

26. Missouri law charges Defendant Crawford with responsibility for carrying out judicially mandated executions and vests Defendant Crawford with complete discretion as to the particular procedures through which such executions are carried out, including discretion to designate the types and quantities of chemicals used, as well as the personnel who assist in all aspects of the procedure.

27. Defendant Crawford has no medical education or training.

28. Defendant James D. Purkett is the Superintendent of the Eastern Reception, Diagnostic & Correctional Center ("ERDCC"), which is where the State of Missouri has been conducting its

executions since April 27, 2005. Between 1990 and 2005, all lethal injection executions occurred at the Potosi Correctional Center in Mineral Point, Missouri. Defendant Purkett's office is at the ERDCC, which is located in Bonne Terre, St. Francois County, Missouri, and he resides within the Eastern Division of the United States District Court for the Eastern District of Missouri.

29. By statute, executions take place in the presence of Defendant Purkett. *See* Mo. Rev. Stat. § 546.740. At all times, and in all actions referred to in this complaint, Defendant Purkett has acted, and will continue to act, under color of state law, and he is sued in his individual capacity and official capacity for the purpose of obtaining declaratory and injunctive relief.

30. Defendant Terry Moore is the Director of Adult Institutions for the State of Missouri. Defendant Moore's office is located in Jefferson City, Cole County, Missouri. Defendant Moore is a resident of the Central Division of the United States District Court for the Western District of Missouri.

31. Defendant Moore was actively involved in the recent executions of Timothy Johnston and Marlin Gray. At all times, and in all actions referred to in this complaint, Defendant Moore has acted, and will continue to act, under color of state law, and he is sued in his individual capacity and official capacity for the purpose of obtaining declaratory and injunctive relief.

32. Plaintiffs are ignorant of the true names of Roes 1-50 but allege that they will

participate in Plaintiffs' executions by virtue of their roles in designing, implementing, and/or carrying out the lethal injection process.

## HISTORY OF LETHAL INJECTION IN MISSOURI

33. The DOC's longstanding disregard for the dangers inherent in the DOC's chosen three-drug execution method was revealed through discovery in the *Taylor v. Crawford* litigation, No. 05-4173 (W.D. Mo.). The Defendants have chosen to execute inmates using drugs that are extremely sensitive to error and painful when improperly administered, yet have consistently refused to implement the safeguards necessary to reasonably ensure that the three-drug cocktail does not cause excruciating pain.

34. In the early to mid-1990s, Defendants or their predecessors performed lethal-injection executions using an injection machine in combination with personnel who had little to no medical training and knew little about the drugs used to perform executions. Unsurprisingly, Defendants or their predecessors soon botched an execution -- that of Emmett Foster -- "which [according to testimony] caused a flurry in the press and embarrassment to the prison." In response, Defendants or their predecessors recruited a surgeon to oversee executions.

35. Yet even as late as October 2005, the date of the last execution conducted in Missouri, Defendants had established no written protocol governing the conduct of executions by lethal injection. Rather, Defendants vested complete responsibility for designing, overseeing and

performing all tasks necessary to the execution procedure (except the actual injection) in John Doe #1, see infra at___, despite the State's knowledge of Doe #1's medical licensure problems and problematic malpractice history. Indeed, the most recent executions supervised by Defendant Crawford were conducted according to the informal protocol that was developed by John Doe #1 (see infra at ¶ __). This informal protocol was not modeled after that employed by any other State and has been used in at least the past six executions conducted under authority of the State of Missouri.

36. Under the unwritten protocol, executions by lethal injection were carried out by the successive injection of three drugs. The first drug, thiopental, is an ultra short acting barbiturate designed to render the inmate unconscious. The second drug, pancuronium bromide or pavulon, completely paralyzes the condemned inmate. The third drug, potassium chloride causes the inmate to suffer a fatal heart attack.

37. Should the thiopental fail to fully anesthetize the condemned inmate, either as a result of improper delivery or otherwise, or should the inmate not remain in a surgical plane of anesthesia through the execution procedure, the condemned inmate would suffer excruciating pain upon injection of the potassium chloride. The inmate, however, would be unable to communicate that suffering as he would be paralyzed by the pavulon.

38. The successful administration of thiopental depends on the proper performance of a

series of complex steps, including mixing the thiopental into solution, calculating doses, inserting the drugs into syringes, inserting the IV catheters and injecting the drugs through many feet of IV tubing from a separate, darkened room. When these tasks are performed by poorly prepared personnel who are incompetent or have little or no medical training, as has been the case in Missouri, the foreseeable opportunities for catastrophic errors multiply.

39. As a result of the very real danger that a condemned inmate may suffer extreme pain should the lethal injection procedure be carried out improperly, it is imperative that properly trained medical personnel be present at the execution in order to ensure:

- that the proper quantities of drugs are prepared for use in the procedure;
- that the thiopental solution is properly prepared;
- that the IV line is properly set such that the drugs will effectively be introduced into the inmate's circulatory system;
- that IV placement itself does not result in the infliction of unnecessary and severe pain, as would be the case if untrained personnel performed a central line catheterization or venous cutdown;

- that upon commencement of the injection, the drugs flow unimpeded through the IV line;
- that the inmate achieves a surgical plane of anesthesia prior to administration of the pavulon;
- that the IV line is properly flushed following injection of the thiopental; and
- that the inmate remains at a surgical plane of anesthesia throughout injection of the pavulon and potassium chloride.

40. On June 3, 2005 Michael Anthony Taylor, an inmate held by the DOC, filed a § 1983 action in the United States District Court for the Western District of Missouri seeking injunctive relief and alleging that Defendant Crawford's unwritten protocol for carrying out executions by lethal injection violated his Eighth and Fourteenth Amendment rights as guaranteed by the U.S. constitution.

41. Discovery obtained in the course of that lawsuit revealed that in connection with the performance of executions by lethal injection, Defendant Crawford had utilized the services of a Board Certified Surgeon, and a licensed vocational nurse, designated in that case as John Doe #1 and John Doe #2 respectively. According to sworn interrogatory responses submitted by Defendant Crawford in *Taylor v. Crawford*, John Doe #1's functions at the executions were to prepare the solution of thiopental and to monitor the inmate's

heart rate and ultimately to pronounce death. In sworn testimony, Defendant Crawford further reaffirmed his statement that he retains sole authority over the type and quantities of drugs used in the execution process.

42. Discovery in the *Taylor* case further elicited Defendant Crawford's statement that the unwritten protocol calls for administration of five grams of thiopental. On this basis, Defendants' expert in *Taylor*, Dr. Mark Dershwitz, opined with 99.9% certainty that no inmate could remain conscious having been administered such a dose of thiopental.

43. Facts developed in the course of discovery in the *Taylor* case, however, revealed a much more sordid truth. In particular, documents produced by the DOC revealed that John Doe #1 took advantage of Defendants' abdication of responsibility to arbitrarily and secretly vary the dose of thiopental from execution to execution. The evidence in the *Taylor* case demonstrated that John Doe #1 had consistently prepared substantially less anesthetic than the DOC represented in court would be used for Taylor's scheduled execution and that of other inmates. Because Doe had difficulty calculating and mixing doses, there is no way of determining how much anesthetic was actually administered in any execution.

44. Subsequent discovery, including a deposition of John Doe #1, confirmed that Defendant Crawford was not aware of these alterations of the unwritten protocol, which were nothing more than

John Doe #1's attempt to improvise as a result of his inability properly to mix the thiopental.

45. In further contradiction of Defendant Crawford's sworn statements, John Doe #1 testified in the Taylor case that he had complete discretion under the unwritten protocol to alter the protocol as he saw fit. When John Doe #1 was asked whether he had "any discussions with Director Crawford about the scope of [his] authority," John Doe #1 replied, "Oh, yes. . . . And again, [Crawford] has no background in corrections and no background in medicine . . . . Since he has no background in either field, he reiterated that he's totally dependant on me advising what could and should and will be done . . . ." John Doe #1 June 5, 2006 dep. tr. at 63:19-25 – 64:1-5. When further asked whether Defendant Crawford would defer to John Doe #1's opinion if he thought a change to the execution procedure needed to be made, John Doe #1 responded, "Absolutely." Id. 64:9-12. Thus, the numerous secret variations in the procedure as performed by John Doe #1 were the direct result of Defendant Crawford's abdication of all responsibility for the performance of executions to John Doe #1.

46. Discovery in *Taylor* also revealed a host of shocking facts about John Doe #1. Despite his reported status as a board certified surgeon, upon information and belief John Doe #1:

- is dyslexic and often confuses and/or transposes numbers;

- could not recall, even with the aid of execution logs, how much thiopental he delivered to inmates in past executions;
- understands his job as bringing about the inmate's death "with no apparent suffering that the public can observe, which they will make the most of;" and
- has been barred from practicing medicine in at least two hospitals in the State of Missouri.

47. Following a hearing on the merits, on June 26, 2006 the United States District Court issued an opinion and Order finding that "Missouri's lethal injection procedure subjects condemned inmates to an unnecessary risk that they will be subject to unconstitutional pain and suffering when the lethal injection drugs are administered." The District Court, therefore, issued an injunction prohibiting the State of Missouri from conducting any further executions under the unwritten protocol and ordered the Defendants to submit to the Court a revised written protocol for the conduct of executions by lethal injection.

48. In the course of its Opinion and Order the District Court stated:

> In addition to the fact that there is no oversight and the responsibility for making changes or adjustments is completely vested in one individual, the Court also has concerns about John Doe I's qualifications. John Doe I readily

admitted that he is dyslexic and that he has difficulty with numbers and oftentimes transposes numbers. John Doe I testified "it's not unusual for me to make mistakes. . . . But I am dyslexic and that is the reason why there are inconsistencies in my testimony. That's why there are inconsistencies in what I call drugs. I can make these mistakes, but it's not medically crucial in the type of work I do as a surgeon." (John Doe Depo. p. 25). The Court disagrees and is gravely concerned that a physician who is solely responsible for correctly mixing the drugs which will be responsible for humanely ending the life of condemned inmates has a condition which causes him confusion with regard to numbers. As the Court has learned, the process of mixing the three different drugs and knowing the correct amount of the drugs to dissolve in the correct amount of solution involves precise measurements and the ability to use, decipher, and not confuse numbers. Although John Doe I does not feel this is crucial in the type of work he does as a surgeon, it is critical when one is mixing and dissolving chemicals for a lethal injection.

49. The *Taylor v. Crawford* litigation thus provided DOC officials, particularly Defendant Crawford, with the opportunity to learn about the

deficiencies in the DOC's execution personnel, as well as the numerous risks created by the DOC's use of the three-drug cocktail and haphazard execution practices. Despite being confronted with this evidence, Crawford continued to insist that John Doe #1 was "bright" and "professional," and Defendant Moore also reaffirmed his confidence in Doe. Moreover, despite the extensive evidence at trial regarding the excruciating pain caused by potassium chloride – evidence with which the DOC's expert did not disagree – Crawford stated that there was no need to consult with medical personnel because executions are not "medical procedure[s] that require[ ] somebody to undergo anesthesia or to be rendered unconscious," and in any event, the DOC is not equipped to do procedures requiring anesthesia.

50. Pursuant to the District Court's Order, on July 14, 2006 Defendants submitted a written execution protocol to the District Court. Upon information and belief, this was the first written lethal injection protocol created by the DOC.

51. Despite the District Court's clear misgivings about the training and qualifications of the medical personnel involved in executions conducted under the unwritten protocol, and Defendants' awareness of the dangers created by having incompetent and unfit personnel such as John Doe #1 run the execution procedures, the new written protocol, attached hereto as Exhibit A, fails to provide any specific information concerning the qualifications or training required of the medical personnel whose services Defendants intend to use in

the course of an execution. Rather, the newly submitted protocol explains only that "a physician, nurse, or pharmacist prepares the chemicals used during the lethal injection" and further states that "a physician, nurse, or emergency medical technician . . . inserts intravenous lines, monitors the prisoner, and supervises the injection of lethal chemicals by non-medical members of the execution team."

52. Notably absent from Defendants' newly proposed protocol is any requirement that the designated medical personnel will have training and qualifications sufficient to ensure that the condemned inmate reaches and maintains a surgical plane of anesthesia and have no other specific disqualifying characteristics.

53. Beyond its failure to require the participation of personnel competent to ensure that the inmate achieves and maintains a surgical plane of anesthesia, Defendants' new written protocol merely codifies virtually all of the unsafe practices that rendered the original, unwritten protocol constitutionally infirm. Defendants Crawford and Moore can no longer claim ignorance of the dangers created by the use of the three-drug cocktail and Defendants' deficient practices and personnel, having heard the extensive evidence proffered by Taylor and credited by the District Court. Nevertheless, Defendants have consciously disregarded those dangers in crafting the new protocol.

54. For instance, Defendants have chosen to continue to use pancuronium and potassium chloride

in the execution procedure even though those drugs are unnecessary in causing death and their omission from the protocol would alleviate the risk of inflicting excruciating pain and/or conscious asphyxiation and significantly lower the risk of botching an execution. In fact, Dr. Mark Dershwitz, the medical expert retained by Defendants to defend their protocol, has advised several states that using a single barbiturate as the sole lethal agent would be an easier, less complex, and less dangerous means of accomplishing executions. Upon information and belief, Dr. Dershwitz has provided Defendants with the same advice. Defendants failed to give serious consideration to the use of a single-drug protocol, even though they still have no reliable method to ensure that Plaintiffs will be unconscious at all times following the administration of thiopental.

55. In addition, Defendants' new protocol permits execution personnel to arbitrarily decide to use a central line catheterization to obtain IV access without medical justification. The protocol does not require that qualified personnel perform the procedure, or that the execution personnel have the equipment necessary to treat the foreseeable complications of central line placement. Central line catheterization is an invasive procedure that involves the insertion of a catheter in one of several veins located deep beneath the skin, including the femoral, subclavian, and internal jugular veins. Placement of a catheter in any of these veins involves a risk of life-threatening and excruciating complications, including severe bleeding and/or a pneumothorax, in which the chest cavity fills up with

air and/or blood. Proper performance of central line catheterization requires specially trained personnel – in all but rare cases, only physicians with specific training can place central lines – and special equipment to treat complications. John Doe #1 previously used one type of central line – femoral catheterization – as the first-choice means of obtaining IV access in all executions, even though peripheral IV access, which is easier, less dangerous, and less invasive, could have been obtained in these inmates. On at least one occasion, Doe #1 botched a femoral line placement, resulting in a hematoma and probable arterial puncture. On at least one occasion, John Doe #1 placed a subclavian central line in an inmate because he was unable to place a femoral line quickly enough. Doe #1 admitted that he did not have the proper equipment to do so, and Defendant Crawford acquiesced in this decision. In drafting the new protocol to allow the use of central lines despite Defendants' knowledge of the dangers of the procedure and previous difficulties in performing it, Defendants have consciously disregarded foreseeable risks of excruciating pain.

56. Defendants' newly proposed protocol also fails to ensure that the inmate's level of anesthetic depth is sufficiently monitored during the lethal injection procedure. As an initial matter, the new protocol does not require that medical personnel use any established technique to monitor the inmate's level of anesthesia. Use of an electrocardiogram, as suggested by the new protocol, is insufficient to ensure that that an inmate remains at a surgical plane of anesthesia. Furthermore, the

mere observation of an inmate's facial expression, especially when done through a mirror as contemplated by the protocol is also insufficient to ensure maintenance of a surgical plane of anesthesia.

57. On September 12, 2006 the District Court issued an Order finding that Defendants' newly proposed protocol offered insufficient protection against the risk that an inmate would experience unconstitutional pain and suffering in the lethal injection process.

58. Rather than attempting to amend the protocol as required by the District Court, on October 18, 2006, Defendants appealed the District Court's findings to the United States Court of Appeals for the Eighth Circuit.

59. On April 17, 2007 Defendants' counsel sent a letter to the Eighth Circuit stating that John Doe #1 would not be used in any future executions.

60. On June 4, 2007 the United States Court of Appeals for the Eighth Circuit issued an opinion vacating the district court's injunction. The Eighth Circuit analyzed the facts of the case under the controlling Eighth Amendment standard which forbids any carrying out executions in a manner that creates "a foreseeable risk of . . . gratuitous and unnecessary pain." In its Opinion, the Eighth Circuit reiterated the requirement that the properly qualified and properly trained personnel be employed to oversee the execution process. In particular the Eighth Circuit stated that "[b]ecause of the pain that would undoubtedly be inflicted by

the third chemical if administered without adequate anesthetization, it is imperative for the State to employ personnel who are properly trained to competently carry out each medical step of the procedure."

61. The Eighth Circuit's opinion further recognized that certain "disqualifying characteristics" could render otherwise properly trained personnel unqualified to discharge the essential functions in the lethal injection context.

62. Mr. Taylor's petition for rehearing en banc remains pending before the Eighth Circuit. The Eighth Circuit's mandate in *Taylor* has not yet issued and accordingly the District Court's injunction remains in effect.

63. On June 18, 2007 Mr. Clemons's counsel sent a letter to the Defendant's Counsel seeking information concerning the training and qualifications of the medical personnel designated to assist in the executions of Plaintiffs.

64. On June 27, 2007, Defendants counsel responded by letter that such request was "premature" as "[n]o one has yet been designated to have a role in the administration of the lethal chemicals to Mr. Clemons because no execution date has been set."

65. Plaintiffs, however, are entitled by due process of law to receive information regarding the qualifications, training and fitness of execution team members. The Eighth Circuit has recognized the importance of these characteristics of execution

personnel to the constitutionality of the State's execution procedures. Even Director Crawford has recognized the importance of subjecting information regarding the education and work history of the execution team to public scrutiny. *See* C. Wittenauer, Missouri Acts to Protect Executioners, Forbes (May 21, 2007), available at http://www.forbes.com/feeds/ap/2007/05/21/ap3744179.html. There is no legitimate state justification for withholding such information, particularly in light of Plaintiffs' willingness to abide by a reasonable protective order designed to protect identifying information.

66. John Doe #1's absence apparently leaves the DOC with no execution personnel who have sufficient training and experience properly to implement the procedure. The DOC recruited Doe because its other personnel had been unable to avoid botching executions in a manner that was visible to the public. John Doe #1's dominance of the procedure made additional training of the other personnel unnecessary. Indeed, at the time of the District Court hearing in the *Taylor* case, the other three execution team members were not competent to perform executions: two had no medical training whatsoever, and John Doe #1 stated that they were unable to properly perform their tasks without his close supervision; and the third had training as a nurse but was unable to tell, despite personal observation, that John Doe #1 consistently prepared the wrong dose of thiopental.

67. More broadly, because sole responsibility for executions was vested in Doe, the DOC's officials never developed the basic understanding of the lethal injection procedure and its risks. Doe's departure thus leaves a knowledge vacuum at all levels of the DOC -- but as the DOC's confidence in John Doe #1 demonstrates, DOC officials are unable to discern whether people are competent or fit to participate in executions. Nor does it appear that the DOC has an impetus to place a high priority on the competence of its personnel. As Doe testified, the DOC's use of a drug that paralyzes inmates guarantees the achievement of the DOC's primary objective in performing executions: to ensure that they are fast and do not cause witnesses to wonder if anything went wrong.

68. The combination of personnel who are likely untrained and incompetent, indifferent officials in charge, and a complicated procedure using painful drugs that are extremely sensitive to error is a recipe for disaster.

## CLAIMS FOR RELIEF

## COUNT I

## CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF THAT MISSOURI'S EXECUTION PROTOCOL IS UNCONSTITUTIONAL AS APPLIED

69. Plaintiffs hereby repeat and reallege paragraphs 1-61 as fully set forth herein.

70. The manner and means of the administration of lethal injection as contemplated by

Defendants is unconstitutional. Despite the clear danger that an inmate will suffer excruciating pain should the lethal chemicals be improperly prepared or administered, Defendants have demonstrated a failure to employ qualified and trained personnel to discharge the medical tasks associated with the lethal injection procedure.

71. Based on Defendants' past failure to employ qualified and trained personnel to oversee medical aspects of the lethal injection procedure, there exists a substantial likelihood that the personnel Defendants select to discharge such responsibilities in the context of Plaintiffs' executions will be similarly lacking in proper training and qualifications.

72. Based on Defendants' past failure to employ qualified and trained personnel to oversee medical aspects of the lethal injection procedure, there exists a substantial likelihood that the personnel Defendants select to discharge such responsibilities in the context of Plaintiffs' executions will suffer from disqualifying characteristics such that they are otherwise unfit to discharge the medical tasks associated with the lethal injection procedure.

73. Defendants' failure to employ qualified and trained personnel to oversee medical aspects of the lethal injection procedure results in a grave risk that Plaintiffs will experience unconstitutional pain and suffering in the course of their executions in violation of their rights as guaranteed by the Eighth

and Fourteenth Amendments to the United States Constitution.

74. Defendants' newly submitted protocol exposes Plaintiffs to a substantial likelihood that they will experience unconstitutional levels of pain and suffering in the course of their executions.

75. In connection with the claims raised in Count I, Plaintiffs state that they have no adequate remedy at law and would suffer irreparable harm in the absence of an injunction.

## COUNT II

## VIOLATION OF PLAINTIFFS' RIGHT TO DUE PROCESS OF LAW

76. Plaintiffs hereby repeat and reallege Paragraphs 1-61 as if fully set forth herein.

77. Despite the clear danger that an inmate will suffer excruciating pain should the lethal chemicals be improperly prepared or administered, Defendants have refused to provide Plaintiffs with relevant information concerning the fitness of those charged with carrying out the medical related tasks at the execution.

78. The DOC's new protocol is purposefully written to be so vague as to lack meaningful information regarding the level of training and qualifications of the personnel who will perform Plaintiffs' executions. The protocol contemplates that the entire execution may be performed by an Emergency Medical Technician or Licensed Vocational Nurse. These paraprofessionals do not

have extensive medical training and are unable and not permitted to perform many procedures that doctors perform, including central line placement. The execution therefore may be accomplished by different means depending on the qualification level of the personnel.

79. In addition, EMTs and LVNs are substantially less able to respond to foreseeable complications in the execution procedure and have substantially less experience performing some of the necessary tasks, such as mixing thiopental or administering intravenous drugs, than pharmacists or doctors. Thus, the qualification level of the personnel used materially affects the nature and extent of the risks involved in the execution process.

80. The Defendants' protocol provides instructions for the execution process at a very high level of generality, leaving to the discretion of the execution team how many crucial steps will be accomplished. These include, but are not limited to, the manner in which the thiopental will be mixed and prepared; the criteria for determining the means of IV access; backup procedures if the first-choice method of IV access cannot be obtained; level of lighting and permissible means of protecting anonymity so as not to interfere with the humaneness of the procedure; and contingency plans for reacting to foreseeable problems such as failure of both IV lines. Execution personnel will have to develop customary practices with respect to these issues and many others, because they are not dictated by the protocol. The practices developed

and their reliability will depend to some extent on the qualifications and training of the execution personnel.

81. The fact that Defendants have not yet "designated" execution teams indicates that the DOC does not yet know the qualifications of its execution team. Upon information and belief, the fact that team members have not yet been designated means that team members have not yet performed any rehearsals or otherwise begun developing the practices that will be necessary to implement the DOC's vague protocol. Defendants are thus completely unprepared to conduct executions, even though they have moved for execution dates.

82. By waiting until the last minute to designate its execution personnel, by maintaining a vague protocol, and by allowing a wide range of personnel to participate, the DOC increases the probability that executions will be performed in an arbitrary, ad hoc manner, just as they were under John Doe #1. Defendants are creating a situation in which each execution is used as practice for the next, and the procedure evolves on the fly. Defendant Crawford's demonstrated willingness to abdicate responsibility for the procedure to the execution personnel, and his lack of medical expertise and engagement with the procedure, also increase the probability that execution personnel will arbitrarily vary from execution to execution.

83. The Eighth Amendment and the Due Process Clause of the Fourteenth Amendment require that Plaintiffs be provided with a meaningful

opportunity to evaluate and challenge Defendants' execution procedures' compliance with Eighth Amendment standards.

84. The Eighth Amendment and the Due Process Clause prohibit Defendants from administering their execution procedures in such a manner as to prevent Plaintiffs from knowing how they will be executed before the execution takes place.

85. By maintaining the arbitrary procedures described above, Defendants are violating the Eighth Amendment and Due Process Clause by preventing Plaintiffs from knowing in advance how they will be executed because Defendants, having fostered an ad hoc, improvisatory system without supervision, will not know in advance what actions the hastily created execution team will take in implementing the protocol.

86. By refusing to provide Plaintiffs with information regarding the training, qualifications, and background of current and already-known prospective execution personnel -- information that is unquestionably relevant to Plaintiffs' challenge to the execution procedures and which the Defendants have no legitimate justification for withholding -- Defendants are violating the Eighth Amendment and Due Process Clause.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court enter judgment as follows:

a. On the first cause of action, entering an Order declaring that Missouri's lethal injection procedure violates the Eighth and Fourteenth Amendments to the United States Constitution and entering an Order permanently enjoining Defendants from conducting executions pursuant to that protocol and enjoining Defendants from employing untrained, unqualified or otherwise unfit personnel to discharge the medical responsibilities involved in the lethal injection procedure.

b. On the second cause of action, entering an Order declaring that Defendants' refusal to provide Plaintiffs with sufficient information bearing on the training and qualifications of the personnel to be charged with overseeing the medical aspects of Plaintiffs' executions constitutes a violation of Plaintiffs' rights to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

c. For costs, attorney's fees, and any such further relief as the Court may deem just and proper.

Dated: July 9, 2007

Respectfully submitted,

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# EXHIBIT
# A

## PREPARATION AND INJECTION OF CHEMICALS

**A. Execution team members**

1. The execution team consists of contracted medical personnel and department employees.

2. A physician, nurse, or pharmacist prepares the chemicals used during the lethal injection.

3. A physician, nurse, or emergency medical technician (EMT–intermediate or EMT–paramedic) inserts intravenous lines, monitors the prisoner, and supervises the injection of lethal chemicals by nonmedical members of the execution team.

4. Two department employees inject the chemicals into the prisoner.

**B. Preparation of chemicals**

1. Medical personnel prepare the lethal chemicals. The quantities of these chemicals may not be changed without prior approval of the department director. Fifteen (15) syringes are prepared and labeled in a distinctive manner as follows.

2. Syringes 1, 2, 3, and 4 each contain 1.25 grams of thiopental (also known as sodium thiopental or sodium pentothal) in a 50 cc solution for a total of 5 grams of thiopental.

3. Syringe 5 contains 30 cc of saline solution.

4. Syringe 6 contains 60 milligrams of pancuronium bromide in a 60 cc solution.

5. Syringe 7 contains 30 cc of saline solution.

6. Syringes 8 and 9 each contain 120 milliequivalents of potassium chloride in 60 cc of solution for a total of 240 milliequivalents of potassium chloride.

7. Syringe 10 contains 60 cc of saline solution.

Exhibit A



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8. Syringes 1A, 2A, 3A, and 4A each contain 1.25 grams of thiopental (also known as sodium thiopental or sodium pentothal) in a 50 cc solution for a total of 5 grams of thiopental. (These syringes are prepared in the event that additional thiopental must be administered.)

9. Syringe 5A contains 60 cc of saline solution. (This syringe is prepared in the event that additional flush is required.)

**C. Intravenous lines**

1. Medical personnel determine the most appropriate locations for intravenous (IV) lines. They insert both a primary IV line and a secondary IV line unless the prisoner's physical condition makes it unduly difficult to insert more than one IV. Medical personnel may insert the primary IV line as a peripheral line or as a central venous line (e.g., femoral, jugular, or subclavian) provided they have appropriate training, education, and experience for that procedure. The secondary IV line is a peripheral line.

2. A sufficient quantity of saline solution is injected to confirm that the IV lines have been properly inserted and that the lines are not obstructed.

**D. Monitoring of prisoner**

1. Medical personnel attach the leads from the electrocardiograph to the prisoner's chest. Medical personnel check the electrocardiograph to confirm that it is functioning properly.

2. The gurney is positioned so that medical personnel can observe the prisoner's face directly or with the aid of a mirror.

3. Medical personnel monitor the electrocardiograph and the prisoner during the execution.

**E. Administration of chemicals**

1. Upon order of the department director, the chemicals are injected into the prisoner by the execution team members under the observation of medical personnel. The lights in the execution support room are maintained at a sufficient level to permit proper administration of the chemicals.

2. The thiopental is injected from syringes 1, 2, 3, and 4 (5 grams). The saline solution in syringe 5 (30 cc) is injected.

3. Before the second and third chemicals are injected, medical personnel physically examine the prisoner to confirm that he is unconscious. Medical personnel use standard clinical techniques to assess consciousness, such as checking for movement, opened eyes, eyelash reflex, pupillary responses or diameters, and response to verbal commands and physical stimuli. In addition to examining the prisoner, medical personnel inspect the catheter site(s).

4. In the unlikely event that the prisoner is still conscious, thiopental is injected from syringes 1A, 2A, 3A, and 4A (5 grams) into the secondary IV line. Approximately 30 cc of the saline solution in syringe 5A is injected. Medical personnel confirm that the prisoner is unconscious as directed in paragraph E.3. When the secondary line is used for thiopental, it is also used for the remaining chemicals.

5. After confirming that the prisoner is unconscious, the second and third chemicals are injected provided at least three minutes have elapsed since the execution team members started injecting the thiopental which rendered the prisoner unconscious.

6. The pancuronium bromide in syringe 6 (60 milligrams) is injected into the prisoner.

7. The saline solution in syringe 7 (30 cc) is injected.

8. The potassium chloride in syringes 8 and 9 (240 milliequivalents) is injected.

9. The saline solution in syringe 10 (60 cc) is injected.

10. If the electrical activity of the prisoner's heart does not cease within five minutes, additional potassium chloride is injected to cause death.

11. When all electrical activity of the heart ends as shown by the electrocardiogram, medical personnel pronounce death.

F. Documentation of chemicals

1. Medical personnel properly dispose of unused chemicals.

2. Before leaving ERDCC, all members of the execution team complete and sign the "Sequence of Chemicals" form thereby verifying that the chemicals were given in the order specified in this protocol.

3. Before leaving ERDCC, medical personnel complete and sign the "Chemical Log" indicating the quantities of the chemicals used and the quantities of the chemicals discarded during the execution.

4. Within three days of the execution, the ERDCC superintendent submits the Sequence of Chemicals and the Chemical Log to the director of the Division of Adult Institutions. The DAI division director and the department director review the records. If they do not detect any irregularities, they approve the two documents. If any irregularities are noted, the DAI division director promptly determines whether there were any deviations from this protocol and reports his findings to the department director.

July 14, 2006

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF MISSOURI**

# Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

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II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties (Diversity Cases Only)
Plaintiff:- N/A
Defendant:- N/A

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 550 Civil Rights

VI.Cause of Action: 42 USC sec. 1983

VII. Requested in Complaint
Class Action:
Dollar Demand: Injunction
Jury Demand: No

VIII. This case IS RELATED to Case Number 05-4173-CV-FJG assigned to Judge Gaitan

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Signature: eoc

Date: 7/9/07

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